

June 16, 2023

Internal Revenue Service
CC:PA:LPD:PR (REG-120080-22)
Room 5203
PO Box 7604, Ben Franklin Station
Washington, D.C. 20044

Re: Comments on REG-120080-22

America's mining industry supplies the essential materials necessary for nearly every sector of our economy – including the manufacturing of batteries for electric vehicles. The National Mining Association (NMA) is the only national trade organization that serves as the voice of the U.S. mining industry and the hundreds of thousands of American workers it employs before Congress, the federal agencies, the judiciary and the media, advocating for public policies that will help America fully and responsibly utilize its vast natural resources under world-leading environmental, safety and labor standards.

The NMA appreciates the opportunity to comment on proposed implementation of the mineral domestic sourcing elements of the Internal Revenue Code Section 30D tax credits for electric vehicles as modified by the Inflation Reduction Act (IRA).

The U.S. is currently at a strategic disadvantage. The U.S. has watched as geopolitical rivals and close allies alike have taken the lead in minerals extraction. In 1995, the U.S. was 100 percent import reliant for only 8 minerals. Today that number has more than doubled, and the U.S. is more import reliant for key minerals than ever. Of the 35 mineral commodities the U.S. Geological Survey lists as essential for U.S. economic and national security, China is the top producer or top supplier for 23 of them.¹ Over the same period, the U.S. has seen the necessary processing and refining capabilities of minerals steadily drift overseas with substantial processing now occurring in China. China also controls the manufacturing of technologies including lithium-ion batteries that depend on these minerals. Recently, China had planned 46 new lithium-ion battery mega-factories for its electric vehicle and energy storage industries versus only three plants in the U.S.² The International Energy Agency reminds

¹ U.S. Geological Survey, [Annual Commodities Summaries](#), 2023

² [Written Testimony of Simon Moores, Managing Director, Benchmark Mineral Intelligence](#), U.S. Senate Energy and Natural Resources Committee, June 2020

us that China produces three-quarters of all lithium-ion batteries and half of lithium, cobalt and graphite processing and refining capacity is located in China. Further, seventy percent of the battery supply chain production is expected to remain in China through 2030.³

The Clean Vehicle Credit, IRA Sec. 13401, provides much-needed incentives to build a stronger electric vehicle manufacturing supply chain from mine to market in North America. The Critical Minerals Tax Credit provides half of the potential Clean Vehicle Credit for electric vehicles that use in their batteries certain percentages of applicable minerals extracted or processed either in the U.S. or sourced from countries with which the U.S. has a free trade agreement, or minerals that are recycled in the North America. There is an increasing domestic sourcing content requirement beginning at 40 percent for vehicles purchased before January 1, 2024, which increases to 50 percent in 2024, 60 percent in 2025, 70 percent in 2026, and 80 percent after December 31, 2026. Additionally, electric vehicles using minerals that were extracted, processed or recycled by a foreign entity owned by, controlled by, or subject to the jurisdiction or direction of China or Russia, and other specified foreign entities of concern, would not be eligible for the credit.

The Goals of the Clean Vehicle Credit Can Be Met

The goals of new domestic sourcing for extraction and processing are a necessary part of new domestic manufacturing in this critical sector, and the goals of the Clean Vehicle Credits are achievable. The U.S. and the 20 countries with which we have free trade agreements can supply the minerals and materials needed for battery storage technologies. These free-trade partnerships include Australia, Canada, Mexico, Chile and S. Korea – America's closest peers for innovative and responsible minerals extraction. An IRA legislative analysis by BloombergNEF stresses that automakers will meet initial sourcing requirements with support from free-trade partners. Demand for battery materials will multiply, and the study stresses that more must be done to invest in domestic processing and refining of minerals and metals.⁴

Mining companies have already reacted with speed to existing supply chain constraints and are preparing to meet future demand. By way of example:

³ International Energy Agency, [Global Supply Chains of EV Batteries](#), July 2022

⁴ BloombergNEF, US Climate Bill Detailed: Few Devils, Many Angels, August 2022

- Talon Metals has entered into an agreement with Tesla to supply nickel at its Tamarack Project in Minnesota.⁵
- Ioneer has signed an agreement with Ford to supply lithium produced in Nevada.⁶ Additionally, a joint venture of Toyota and Panasonic will buy lithium from Ioneer's mining project in Nevada to build electric vehicle batteries in the U.S.
- Ford, Tesla and Toyota have signed agreements for nickel supply with BHP.⁷
- Ford has also signed agreements for lithium supply with Compass Minerals and Albemarle.⁸
- Controlled Thermal Resources will supply Stellantis lithium hydroxide over 10 years from its project in California. General Motors has also made a multi-million-dollar investment in the project.⁹
- Piedmont Lithium announced it will build a lithium processing and manufacturing plant for electric vehicle batteries in Tennessee which will support its planned lithium mine in nearby North Carolina.¹⁰
- Jervois, which ultimately will operate the only primary cobalt mine in the U.S., will provide nearly 17,000 tons of cobalt during the life of the mine – enough to create up to 7 million electric vehicle batteries.¹¹
- General Motors, in its second quarter of 2022 earnings call, reported to investors the company is confident it will have enough materials to build 400,000 electric vehicles this year and in 2023 and to get to 2 million battery-powered cars per year by 2025.¹²
- More recently, General Motors announced it will invest \$650 million in Lithium Americas and help it develop Nevada's Thacker Pass lithium mining project, which holds enough of the battery metal to build 1 million electric vehicles annually. General Motors has also agreed to buy all the lithium from Thacker Pass when it opens in 2026 - roughly 40,000 tonnes per year.¹³
- There are currently 15,500 active lithium claims in Nevada alone, and two Nevada lithium projects nearing shovel readiness – Lithium Nevada's

⁵ [Talon Metals](#), Press Release, January 2022

⁶ [PR Newswire](#), Ioneer Signs Binding Lithium Offtake Agreement with Ford, July 21, 2022

⁷ [Teslarati](#), Ford signs nickel supply agreement with Australian mining Company, August 3, 2022

⁸ [Investopedia](#), Ford Rolls Out Lithium Deals With Sights Set on EV Production, May 22, 2023

⁹ [Stellantis](#), Press Release, June 2022

¹⁰ Press Release, [Piedmont Lithium Selects Tennessee for New Lithium Hydroxide Project](#), September 2022

¹¹ Washington Times, [First new cobalt mine in decades opens in Idaho; key component in electric vehicle batteries](#), October 8, 2022

¹² [Mining.com](#), GM says it has battery metals secured as industry frets supply, April 27, 2022

¹³ [Reuters](#), GM to help Lithium Americas develop Nevada's Thacker Pass mine, January 31, 2023

Thacker Pass Mine and Ioneer's Rhyolite Ridge – could account for 25 percent of global lithium production.¹⁴

The IRS Proposed Guidance Undermines Domestic Sourcing

The new guidance (REG-120080-22) proposes a 50 percent value added test to serve as a transition rule to provide manufacturers with time to comply with the Critical Minerals Tax Credit. However, this test is inconsistent with the underlying statute. The only phase-in provided in the IRA is the increasing percentage of value of the critical minerals contained in electric vehicle batteries up to 80 percent beginning in 2027. A 50 percent value added test would mean that instead of the statutorily required 40 percent applicable percentage for this year, the proposed value added test would be met if only 20 percent of the value of the extraction or processing is done in the United States or a country with which the United States has a free trade agreement.

The new guidance proposes treating additional countries as if they have a free trade agreement with the U.S. even when there is no Congressionally approved free trade agreement with those countries.¹⁵ There is no basis for expanding the statutory text of “free trade agreements” through regulation or guidance to include limited scope agreements that have not been approved by Congress. The proposed expansion of the list of free trade agreement countries has justifiably drawn criticism from Senator Joe Manchin, a principal negotiator of the Clean Vehicle Credit language in the IRA.¹⁶ The extra-legal expansion the free trade agreement definition has also drawn criticism from another principal author of the tax provisions in the IRA, Senate Finance Committee Chairman Ron Wyden who recently said, “Free trade agreements cannot be unilaterally decided by the executive branch. They require consultation and consent from Congress. That includes any agreements on critical minerals.”¹⁷ An expanded definition of free trade agreement has drawn bipartisan pushback from the House of Representatives as well. On June 14, 2023, the House Ways and Means Committee reported the *Build It In America Act*, H.R. 3938, which would

¹⁴ [Nevada Mining Association op-ed](#), Demand for lithium: Is Nevada's modern mining industry the answer? August 5, 2022

¹⁵ See, <https://ustr.gov/trade-agreements/free-trade-agreements>.

¹⁶ [Forbes](#), Manchin Slams Treasury For Effort To End-Run Around Congress, June 12, 2023

¹⁷ [Associated Press](#), Many electric vehicles to lose big tax credit with new rules, March 31, 2023

modify the section 30D Clean Vehicle Credit by clarifying that a free trade agreement is defined as an international agreement approved by Congress.¹⁸

Finally, the proposed guidance defers to future guidance the rules applicable to foreign entities of concern. The Section 30D tax credit does not apply to applicable critical minerals contained in the battery of an electric vehicle extracted, processed, or recycled by a foreign entity of concern. Issuing this guidance without addressing the foreign entity of concern rules delays or dilutes the law enacted by Congress and suggests that Treasury and the IRS may turn a blind eye on extraction or processing in China or by foreign entities of concern, allowing such extraction to qualify under Section 30D when Congress said it should not.

Conclusion

The continued partnership between the U.S. mining and automotive industries supporting domestic sourcing and domestic manufacturing will lead to the success of the Clean Vehicle Credits in the Inflation Reduction Act. However, a key intent of the Critical Minerals Tax Credit is to incent domestic extraction and processing in the U.S. or from countries with which the U.S. has a Congressionally approved free trade agreement. The Treasury Department and the IRS should implement Section 30D to support the domestic sourcing goal of Congress rather than finding ways to undercut it.

Respectfully submitted,

Ryan Jackson
Senior Vice President of Government and Political Affairs
101 Constitution Ave. NW, Suite 500E
Washington, D.C. 20001
rjackson@nma.org

¹⁸ Build It In America Act, H.R. 3938, Section 303, as reported from the House Ways and Means Committee on June 13, 2023